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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/936,304	09/24/1997	DAWEI DONG	15758.705	9608

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EXAMINER

RODRIGUEZ, ARMANDO

ART UNIT PAPER NUMBER

2828

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

08/936,304

Applicant(s)

DONG, DAWEI

Examiner

ARMANDO RODRIGUEZ

Art Unit

2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6 and 10-14 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>3-15-2005</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Claims 6-14 are pending.

### ***Response to Arguments***

Applicant's arguments, see pages 5-7, filed December 29, 2004, with respect to the rejection(s) of claim(s) 6-12 under 35 USC 102 and claims 13 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Imbrie et al (PN 5,400,514).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6,10-12,14 are rejected under 35 U.S.C. 102(b) as being anticipated by Imbrie et al (PN 5,400,514).

Regarding claims 6,11,

Imbrie et al illustrates in figure 1 a laser instrument having a base (12) [applicant's case] which includes a motor (92) [applicant's motor] see figure 3 and column 6 lines 21-25, a shaft (16) [applicant's rotating shaft] that rotates about axis A column 4 lines 20-22, which implies 360 degrees, and a pointer unit (140 [applicant's module] having a laser diode (50) see figure 2 and column 5 lines 1-4. Thereby, as

illustrated the the laser diode and the rotating shaft are not coincident and the laser diode provides a laser beam which forms a reference plane perpendicular to the rotating shaft column 4 lines 22-24.

Regarding claim 10,

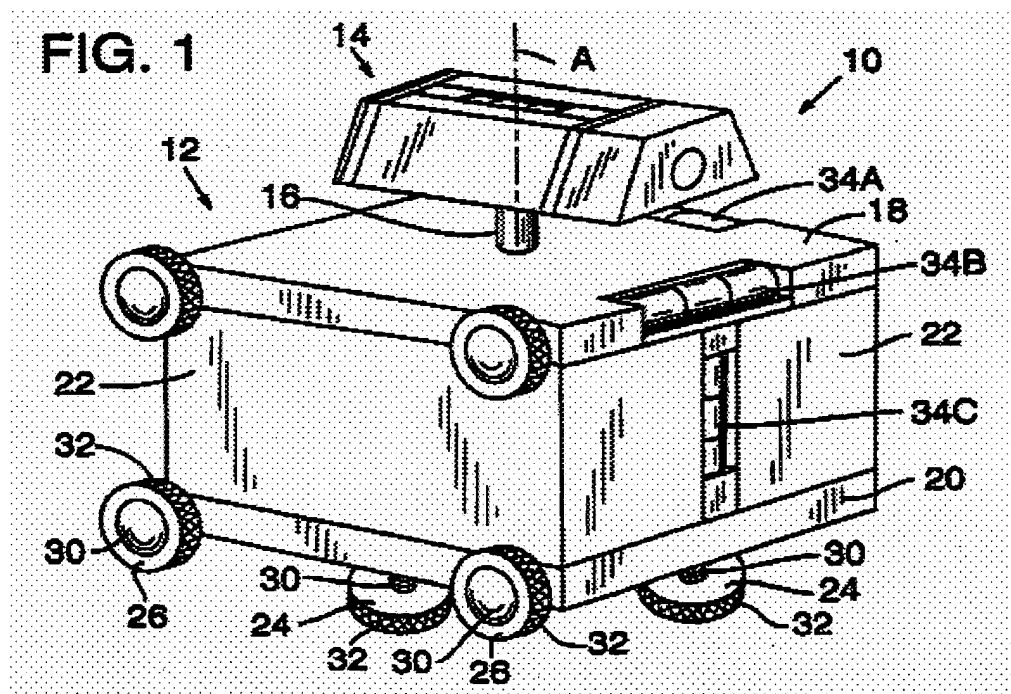
Figure 7 illustrated a circuit diagram for driving the laser diode, which includes a DC voltage source [applicant's battery].

Regarding claim 12,

As illustrated in figure 1 and described in column 4 lines 11-24, the laser diode is rotated about axis A of the shaft (16).

Regarding claim 14,

Shaft (16) [applicant's rotating shaft] rotates about axis A, see column 4 lines 20-22, which implies 360 degrees.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Imbrie et al (PN 5,400,514).

Regarding claims 13,

Imbrie et al illustrates in figure 1 a laser instrument having a base (12) [applicant's case] which includes a motor (92) [applicant's motor] see figure 3 and column 6 lines 21-25, a shaft (16) [applicant's rotating shaft] that rotates about axis A column 4 lines 20-22, which implies 360 degrees, and a pointer unit (140 [applicant's module] having a laser diode (50) see figure 2 and column 5 lines 1-4. Thereby, as illustrated the the laser diode and the rotating shaft are not coincident and the laser diode provides a laser beam which forms a reference plane perpendicular to the rotating shaft column 4 lines 22-24.

Imbrie et al does not disclose the use of a second laser diode.

However, in accordance with *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. In the instant case Imbrie has disclosed the recited limitations except for a second laser diode, which along with the recited first

laser diode provide the reference plane. Imbrie et al does disclose a laser light source, which also forms a reference plane, therefore absent any new or unexpected result the recited second laser diode is considered a mere duplication of parts since the second laser diode only forms a reference plane. See MPEP 2144.04 VI.

***Allowable Subject Matter***

Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: None of the cited prior arts alone or in combination discloses the claimed laser level having the recited limitations of dependent claims 7-9, in particular the module defines a hole which contains the laser diode.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ARMANDO RODRIGUEZ whose telephone number is 571-272-1952. The examiner can normally be reached on 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MINSUN HARVEY can be reached on 571-272-1835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



ARMANDO RODRIGUEZ  
Examiner  
Art Unit 2828

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